

**Agreement Between
WhidbeyHealth
And Central Whidbey Fire and Rescue**

This Agreement is entered into by and between WhidbeyHealth and Central Whidbey Fire & Rescue (“Agency”) both of which are municipal corporations organized and existing under the laws of the State of Washington and located in Island County. This agreement is entered into pursuant to the provisions of the Washington State Interlocal Cooperation Act, RCW 39.34.

Recitals:

- A. The purpose of this agreement is to provide the citizens residing in the response area of the Agency with Basic Life Support (“BLS”) ambulance response and transport and to improve over-all Emergency Medical Service (“EMS”), including Advanced Life Support (“ALS”) availability to Whidbey Island. In addition, it is understood that the Agency may be requested to operate outside of their response area to aid in providing services to Whidbey Island.

- B. It is the goal of the parties not to have the program result in the displacement of any employees of WhidbeyHealth or Agency or to impair any existing contracts for services to which WhidbeyHealth or the Agency is a party.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereby enter into this Interlocal Agreement pursuant to the Interlocal Cooperation Act (RCW39.34) and agree as follows:

1. The Agency agrees as follows:

- 1.1. The Agency will provide a minimum of two (2) personnel on a twenty-four (24) hour/seven (7) day per week basis (24/7) for the BLS ambulance (“Unit”) provided to the Agency by WhidbeyHealth under this Agreement. Said personnel will include a minimum of two (2) Emergency Medical Technicians (“EMT”) per Unit. Agency apparatus and the BLS Unit may be cross staffed by Agency personnel. The above does not preclude having non-EMT certified Agency personnel drive the ambulance when both EMTs assigned the ambulance are required to provide patient care, or other extenuating circumstances exist in the interest of patient care.

- 1.2. Scramble time (time of dispatch to time responding) will be four (4) minutes or less for 911 responses, stat transfers, calls for split crews, system coverage, or transfer activity unless otherwise specified by WhidbeyHealth EMS or ICOM. When said Unit

is not responding or operating in a capacity for WhidbeyHealth, they may be used by the Agency for official Agency business, including fire and emergency responses, provided said Unit is available to respond in BLS capacity pursuant to this provision within four (4) minutes of dispatch if they are on Agency business of a non-emergency nature (i.e. training, maintenance, administrative, inspections, etc.). The dispatch time set forth in this provision shall be extended to the extent that extenuating circumstances preclude a response within the required four (4) minute scramble time (i.e. mechanical failure of the Unit or the Unit is on an assigned medical or emergency call or is out of area on a medical transport). If the Unit is out-of-service due to mechanical failure WhidbeyHealth EMS must be notified as soon as possible. An alternate Unit may be provided to the Agency by WhidbeyHealth depending on availability.

- 1.3. The Agency will participate in Criteria-Based Dispatch at the request of WhidbeyHealth EMS and with the approval of the Island County Medical Program Director. The BLS Unit will be able to function as an independent, competent BLS transport unit capable of providing appropriate triage, treatment, and transport in accordance with Department Of Health standards and Island County Protocol.
- 1.4. The Agency will make every effort to respond the Unit to all emergencies (i.e. motor vehicle collisions, rescues, agency assists etc.) in an effort to place the Unit immediately back in service when personnel become available and/or to provide greater transport capabilities in the event there are multiple patients. It is understood that this may not always be possible during events requiring multiple fire/rescue apparatus. When cross staffed the Agency will make every effort to maintain the BLS Unit in-service when not committed to another incident.
- 1.5. The Agency will have operational oversight over all their personnel while on duty in the Fire Department in the Agency's response area as defined on Exhibit A, except that WhidbeyHealth EMS will have operational oversight over any personnel when Units are dispatched into service for medical incidents or coverage including 911 transports, transfer activity, split crews, or system coverage. For purposes of this Agreement, "system coverage" is defined as coverage occurring during times the EMS system is in high demand, ALS and/or BLS Units are out of position or otherwise unavailable to respond or maintain acceptable response times. System coverage may include utilizing Agency BLS Units to cover another agency's vacated response area or splitting crews to maintain consistent EMS coverage to Whidbey Island. "Split crews" are defined as an Agency BLS Unit utilizing one (1) of their personnel to staff a WhidbeyHealth ALS ambulance while a WhidbeyHealth employee staffs the Agency BLS Unit (or other available ambulance). This is typically done to create two (2) ALS ambulances from one (1) ALS ambulance and one (1) BLS Unit to maintain

ALS coverage and/or to respond to multiple calls. "Transfer activity" is defined as activity occurring when an Agency BLS Unit and/or its personnel are used to transport or transfer patients to or from WhidbeyHealth or to or from other area hospitals and related facilities in a non-emergent or stat mode.

- 1.6. The primary mission of the BLS Unit is to respond to 9-1-1 calls and transport BLS patients within their district and to assist in maintaining ALS Unit availability for higher acuity calls. The Agency BLS Unit will not be utilized for out-of-district non-emergent transfers or out-of-district system coverage as a first or primary option. However, utilization of the BLS Unit for out-of-district activity (i.e. system coverage and/or transfer activity) will be an option when two (2) or more ALS Units are unavailable or out of position in a given response area (i.e. two (2) North or two (2) South). This is guideline for BLS Unit utilization and is not inclusive of the infinite variations in circumstances related to providing EMS to Whidbey Island. Therefore, unforeseen circumstances may arise in which utilizing the BLS Units outside of these guidelines may be necessary. This agreement serves to provide flexibility and the agreement that the Agency BLS Unit will participate in these activities when dictated by system needs as determined by WhidbeyHealth EMS.
- 1.7. Per the above sections the Agency agrees to split crews with WhidbeyHealth units as needed for the purpose of maintaining EMS coverage of the island, to cover emergency calls, to transport off-island, and/or to participate in transfer activity. The Agency also agrees to provide personnel to assist with patient care on scene within the Agency district and the utilization of Agency personnel in an ALS Unit during transport if a patient's condition necessitates additional personnel.
- 1.8. When the Agency personnel are engaged in EMS, the Agency and its personnel will comply with all established policies, procedures and protocols of WhidbeyHealth, WhidbeyHealth EMS, and the Island County Medical Program Director to be provided by WhidbeyHealth.
- 1.9. All Agency personnel involved in transporting patients on behalf of WhidbeyHealth will participate in required regular training, or any other medical/operational training as assigned by WhidbeyHealth or the Island County Medical Program Director. Any training that is required by WhidbeyHealth, outside of the Agency's regular Ongoing Training and Evaluation Program (OTEP) training, will be provided by WhidbeyHealth per Section 2.4 of this agreement. WhidbeyHealth will be responsible for providing the instructor(s), materials, and content at their expense.
- 1.10. The Agency will not alter, change or modify the appearance or configuration of any Unit (inside or outside) without prior written approval of WhidbeyHealth. The

Agency may add the Fire District logos to the BLS Unit exterior as well as “CWIFR” and/or “AID UNIT”. These should be removable and should not cover existing WhidbeyHealth logos. Although, “AID UNIT” may cover “Paramedic Unit” where appropriate. Furthermore, “In partnership with...” in reference to this agreement, may also be added at the Agency’s discretion.

- 1.11. The Agency is acting as independent contractor in the performance of its obligations under this Agreement. It is understood and agreed that WhidbeyHealth will not provide any benefits to the employees of the Agency, such as workman’s compensation insurance, medical insurance or retirement benefits.
- 1.12. The Agency shall obtain and maintain in force comprehensive public liability insurance, including property damage, insuring WhidbeyHealth and the Agency against liability for injury to persons or property occurring in connection with the use of the Units by the Agency and its personnel. The Agency shall also obtain and maintain in force, at the cost of the Agency, auto liability and physical damage insurance for each Unit provided to the Agency under this Agreement, which insurance shall be similar to insurance maintained by the Agency for Agency-owned vehicles and which insurance shall list the Agency as the first named insured and WhidbeyHealth as an additional insured and loss payee.
- 1.13. The Agency will make every effort to provide appropriate staffing on the BLS unit twenty-four (24) hours a day for each day of the year. In the event that a unit is not fully staffed, the agency agrees to reimburse WhidbeyHealth’s cost for each hour that the unit is out of service or service is limited as a result of insufficient staffing (i.e. one (1) or less Agency personnel or less than two (2) EMTs available to staff the Unit). Additionally, the Agency agrees to reimburse WhidbeyHealth for each hour that the Agency removes a crew from service to accomplish non-emergency Agency business. Due to Agency staffing and cross staffing practices it may occur that the Unit is staffed and available for some activities outlined in this agreement that take place within the district, but may not be available for other activities (i.e. split crews, out-of-district activities, or transfer activity). Each incidence of refusal or inability to provide a services covered in this agreement will be calculated hourly as follows: refusal or inability to split crews = two (2) hours, refusal or inability to do an on-island inter-facility transfer = two (2) hours, refusal or inability to provide out-of-district coverage = two (2) hours, refusal or inability to do an off-island inter-facility transfer = four (4) hours. Reimbursement will not be calculated if the Unit is assigned to another emergency, out-of-service due to mechanical failure, or out-of-district on an assigned emergency, system coverage, or transport or returning from these activities. The formula for reimbursement shall be: $\$281,000/8760 \text{ hours} = \32.08 per hour for each hour the Unit is out of service, insufficiently staffed, or unable to meet any obligations

of this agreement as outlined above. In the event that there are five (5) or more incidents requiring reimbursement by the Agency logged by WhidbeyHealth within a given month, the Agency agrees to meet with WhidbeyHealth EMS at their request to discuss possible agreement amendments and/or the continuation of the agreement.

1.14. If the Unit is insufficiently staffed, this must be communicated with ICOM in real time (i.e. “Aid 503 is out-of-service” or “Aid 503 is staffed with one (1)”). Anytime the Unit is insufficiently staffed the Agency will also advise WhidbeyHealth EMS as soon as possible, as well as anytime staffing challenges are rectified. It is understood that the Unit may be considered fully staffed and in service during times the Agency is cross staffing apparatus, as long as the Unit can meet the scramble time requirements.

1.15. Per the above sections the Agency agrees to split crews with WhidbeyHealth units as needed for the purpose of maintaining EMS coverage of the island, to cover emergency calls, to transport off-island, and/or to participate in transfer activity. The Agency also agrees to provide personnel to assist with patient care on scene within the Agency district and the utilization of Agency personnel in an ALS Unit during transport if a patient’s condition necessitates additional personnel.

2. WhidbeyHealth agrees as follows:

2.1. WhidbeyHealth will provide one (1) ambulance under this agreement.

2.2. WhidbeyHealth will maintain, and fuel the Unit covered under this Agreement. WhidbeyHealth shall maintain the BLS Unit in safe operating condition. The Agency reserves the right to take the Unit out of service due to mechanical failure or unsafe condition which would be immediately communicated with the WhidbeyHealth EMS Lead Paramedic.

2.3. WhidbeyHealth will have the sole right to bill the recipient of any EMS or patient transport service provided by the Agency under this Agreement and WhidbeyHealth will maintain all related patient records.

2.4. WhidbeyHealth will provide the Agency with a list of all training requirements for operation and use of the Unit and will assist the Agency in providing the required training to Agency Personnel. The Agency will be responsible for the training required by Washington Department of Health and the Island County Medical Program Director to maintain their personnel’s EMS certifications (i.e. OTEP). All WhidbeyHealth required training, that is not OTEP training, will be provided to the district on a mutually agreeable schedule and per Section 1.4 of this agreement.

- 2.5. WhidbeyHealth will provide the Agency with on line Medical Control, through the Island County Medical Program Director's established protocols.
- 2.6. WhidbeyHealth agrees to pay the Agency the sum of \$281,000, during each calendar year of this Agreement, which sum shall be paid in two semi-annual installments, with the first installment payable on December 31st and the second installment payable on June 30th of each calendar year. All reimbursements shall be deducted from said installments. In the case of early termination of this Agreement pursuant to Section 6 below, the sum payable to the Agency shall be prorated based upon the percentage of the calendar year that the Agreement is effective prior to termination.
- 2.7. WhidbeyHealth agrees to reimburse the Agency at an hourly rate if the Agency provides staffing for a primary ambulance traditionally staffed with two (2) WhidbeyHealth employees. This does not include split crews for the purpose of providing EMS coverage, responding to emergencies, or transfer activity. This only includes staff augmentation for an unfilled position on the WhidbeyHealth EMS schedule. The reimbursement rate shall be the hourly shift rate for a Central Whidbey Island Fire and Rescue employee.
- 2.8. WhidbeyHealth agrees to replace expendable medical supplies normally stocked in WhidbeyHealth ambulances that are used in patient care and emergency medical training.
3. Hold Harmless: Each party agrees to defend and hold the other party and its respective officers, agents, elected officials, directors and employees harmless from any and all damages, costs, expenses and fees, including reasonable attorney's fees, and from any judgments and suits at law, or equity of whatsoever nature (hereinafter "actions") brought against the other party directly or indirectly arising from, or in connection with, or incident to (i) a breach of the provisions of this Agreement by the party or (ii) the negligent or intentional acts or omissions of that party or its officers, agents, directors or employees in connection with this Agreement; provided that nothing herein shall require either party to hold the other party harmless from actions caused by or resulting from the sole negligence of said party, its officers, agents, elected officials, directors or employees, and provided further, that if any such actions are caused by or result from the concurrent negligence of the parties or their respective officers, agents, elected officials, directors or employees, then this indemnity provision shall be valid and enforceable only to the extent of that particular party's negligence, or that of its officers, agents, elected officials, directors or employees. The obligations set forth in this Section 3 shall survive the expiration or earlier termination of this Agreement.

4. Mutual Cooperation and Support. WhidbeyHealth and the Agency mutually concur with the level of support and resource commitments documented herein and further agree to use their combined best efforts to realize the goals and purposes of this Agreement. Without limiting the generality of the forgoing, it shall be understood that under normal circumstances, the BLS Unit will respond to 911 calls within the Agency's district and transport BLS patients from the Agency's district at WhidbeyHealth EMS's discretion as well as split crews with WhidbeyHealth units to maintain ALS coverage to the Agency's district and island wide. Furthermore, an effort will be made by WhidbeyHealth EMS to keep the Unit in service in the Agency's district except when transporting BLS patients from within the Agency's district or when circumstances require additional units to maintain ALS coverage.
5. Notices: Whenever notice is required to be given under the terms of this Agreement, it shall be in writing and sent, faxed or delivered to the following respective addresses:

WhidbeyHealth:

Attn: Ron Telles, CEO
Address: 101 N Main Street
Coupeville, WA 98239
Phone: 360-678-5151
Fax: 360-678-0945
Email: teller@whidbeyhealth.org

Attn: Roger Meyers, EMS Manager
Address: 101 N Main Street
Coupeville, WA 98239
Phone: 360-914-3193
Fax: 360-914-3199
Email: meyers@whidbeyhealth.org

Agency:

Attn: Steve Hutchinson, Fire Commissioner
Address: 1164 Race Rd.
Coupeville, WA 98239
Phone: 360-678-3602
Fax: 360-678-4615
Email: commissioners@cwfire.org

Attn: Chief Edward E. Hartin
Address: 1164 Race Rd.
Coupeville, WA 98239
Phone: 360-678-3602

Fax: 360-678-4615

Email: ehartin@cwfire.org

6. Term of Agreement. This Agreement will commence on September 12th, 2019 and terminate on September 11th, 2020. Either party may terminate this Agreement for any reason upon one hundred twenty (120) days prior written notice to the other party.

7. Miscellaneous Provisions.

7.1 Neither the Commissioners of WhidbeyHealth or the Commissioners of the Agency, in their individual capacities, nor any other officer, agent, employee, director or other representatives of WhidbeyHealth or the Agency shall be personally liable for any acts or failure to act in connection with this Agreement.

7.2 If any provisions of this Agreement or their application are held invalid, the remainder of the Agreement that can be given effect without the invalid provisions shall remain in full force and effect.

7.3 No modifications or amendment of this Agreement shall be valid unless it is approved by the Commissioners of the Agency and by the Board of Commissioners of WhidbeyHealth and executed by the authorized representative of both parties to this Agreement.

7.4 This Agreement supersedes all prior agreements between WhidbeyHealth and the Agency and this Agreement shall be considered to be the only agreement between the parties hereto and sets forth the entire agreement of the parties as to the BLS ambulance program.

7.5 Terms that are capitalized but not defined in this Agreement shall have the meaning set forth in RCW 18.73.030, as amended.

7.6 For a period of four (4) years after Agency has performed the Agreement, Agency shall make available, upon written request of the Secretary of the Department of Health and Human Services ("Secretary") or upon request of the Comptroller General of the United States ("Comptroller"), or any of their duly authorized representatives (collectively, the "Requesting Party"), or upon the request of WhidbeyHealth, the Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by WhidbeyHealth to Agency pursuant to this Agreement. If Agency pays a subcontractor more than \$10,000 over a twelve (12) month period to perform the Agreement, then Agency shall obligate the subcontractor to permit Access to the Requesting Party.

7.7 No press release or other public announcement, verbally or in writing, referring to the other party shall be made without prior written consent from the other party. Any press

release or other public announcement shall require giving the other party at least seventy-two (72) hours written notice of such release prior to its publication or announcement for approval. This only pertains to items covered by this agreement.

7.8 All disputes between the parties, including, without limitations, disputes missing from relating to this Agreement or relationship between the parties, shall be resolved by the dispute resolution process set forth in Exhibit B.

IN WITNESS HEREOF, the parties have caused this Interlocal Agreement to be executed in duplicate this _____ day of _____, 2019.

AGENCY:

WHIDBEYHEALTH:

By: Steven Hutchinson, Commissioner

By: Ron Telles, Chief Executive Officer

By: Paul Messner, Commissioner

By: Cheryl Engle, Commissioner

Exhibit A

Definitions:

Agency Response Area: The service area for this Agreement extends from the northern border of the Central Whidbey Island Fire and Rescue district (F5127) including mutual aid areas, south to the district's southern border (F5431) including mutual aid areas, and includes all points east and west within. This service area is consistent with Central Whidbey Island Fire and Rescue response zones.

BLS: Basic Life Support

ALS: Advanced Life Support

UNIT: Ambulance

Management and Supervisory Authority: This authority includes, but is not limited to assignment, transfer, discipline, and discharge of employees or volunteers.

Operational Oversight: Ensuring that delivery of service is consistent with medical protocols, hospital policy and procedure, and the provisions of this agreement.

911 Response: Response to requests for emergency medical services subsequent to a 911 call, walk-in, or other request for response to a medical emergency. 911 responses may or may not include transportation of a patient to an appropriate medical facility.

Interfacility Transfer (Transfer Activity): Transport of patients requiring ambulance service between hospitals or other medical facilities on a routine or stat basis.

System Coverage: Maintaining Island wide coverage of ALS Ambulances to minimize response times. System coverage requires availability of ALS Ambulances available in the north, central, and south response zones.

Scramble Time: The elapsed time between receipt of a page for response and when the unit begins response.

Split Crew: Increasing the number of ALS Ambulances by splitting a two paramedic crew on an ALS Ambulance and a two EMT crew on a BLS ambulance to increase the capability of the BLS Ambulance to the ALS level.

Staffing Augmentation: 1) Use of one EMT from the crew of a BLS Ambulance to augment the crew of an ALS Ambulance; or 2) Use of one EMT from the crew of a BLS Ambulance to allow placing an additional ALS Ambulance in service.

Criteria Based Dispatch: Criteria Based Dispatch (CBD) is an Emergency Medical Dispatch (EMD) triage program that is based on patient signs and symptoms collected by 911 dispatchers and which dispatches the appropriate number and level (ALS or BLS) of resources.

EXHIBIT B
DISPUTE RESOLUTION

1. **POLICY.** The parties hope there will be no disputes arising from this Agreement. If a dispute arises, the parties shall first try to negotiate a fair and prompt resolution through an internal process. If they are unsuccessful, the dispute shall be resolved by binding arbitration, the parties acknowledging that they intend to give up their right to have any dispute arising out of this Agreement decided in court by a judge or jury. The provisions of the Washington arbitration statute, chapter 7.04 RCW, are incorporated herein to the extent not inconsistent with the other terms of this Agreement.

2. **INTERNAL DISPUTE RESOLUTION PROCESS.** Each party agrees that if a dispute arises it will promptly notify the other party. The parties shall attempt in good faith to resolve the dispute pursuant to District's internal dispute resolution process. This process shall entail all east one meeting between WhidbeyHealth administration and Agency administration to discuss the dispute and such meeting may be facilitated, at the request of either party, by an independent facilitator. The cost of the facilitator shall be divided equally between parties. If the parties are unable to resolve the dispute within 60 days, the dispute shall be resolved by binding arbitration as set forth in Section 3.

3. **BINDING ARBITRATION.** Any controversy or claim between the parties arising from or relating to this Agreement shall be resolved by an arbitration to be commenced in the manner provided in RCW 7.04.060; provided, however, that all statues of limitations that would otherwise apply shall apply to disputes submitted to arbitration. This process applies regardless of when the dispute arises and will remain in effect after termination of this Agreement.
 - 3.1 **Commencement.** Arbitration shall be commenced by serving a written demand for arbitration on the other party, either personally or by both regular first-class mail and certified mail, return receipt requested in accordance with the terms of RCW 7.04.060.

 - 3.2 **Arbitrator.** There shall be one arbitrator selected by mutual agreement of the parties. If the parties cannot, within 15 days after commencement of the arbitration, agree on an arbitrator, he/she shall be selected by the administrator of the Judicial Dispute Resolutions ("JDR") office in Seattle, Washington, within 15 days thereafter. In the event JDR no longer operates in Seattle, the mediator

shall be chosen by the administrator of the American Arbitration Association (“AAA”) in Seattle, Washington. When the arbitrator cannot be mutually agreed upon, the party seeking arbitration shall apply to JDR or AAA within 10 days of completion of the internal process and shall request arbitration within 120 days. The venue of the arbitration shall be Coupeville, Washington, or another location agreed to by the parties.

- 3.3 Arbitrability. The arbitrator shall determine whether a controversy or claim is covered by the Agreement.
- 3.4 Third-Party Intervention. If either party so request at any time within 75 days of the submission of the dispute to arbitration, the parties shall try to resolve it by nonbinding third-party intervention, including mediation, evaluation or both, but without delaying the arbitration hearing date.
- 3.5 Arbitration Procedures. The arbitration shall be conducted under the JDR Dispute Resolution Rules or the AAA Commercial Arbitration Rules, whichever entity presides over the arbitration, in effect on the date that the arbitrator is selected, to the extent consistent with this Exhibit B. Any discovery authorized by the arbitrator shall not extend the time limits established by this section. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such evidence as reasonable business people would consider in the conduct of their day-to-day affairs. The parties wish to minimize the cost of the dispute resolution process. To that end, the arbitrator shall have the authority to limit live testimony and cross-examination and may require the parties to submit some or all of their case by written declaration, but only to the extent the arbitrator determines that such procedure can be done without jeopardizing a fair hearing of the dispute.
- 3.6 Time Limits. The arbitrator and the parties shall do what is reasonably necessary to conduct the arbitration hearing within 120 days of the date the arbitrator is selected, and the arbitrator shall make every effort to limit the hearing to two days and to render his/her opinion within 14 days after the hearing. The parties have specified these times limits to expedite the proceeding, but they are not jurisdictional, and the arbitrator may for a good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award.

3.7 Construction of Agreement. The arbitrator shall have no authority to add to, subtract from, or otherwise change or modify the provisions of this Agreement and shall only interpret existing provisions of this Agreement as they may apply to the specific facts of the issue in dispute.

3.8 Award. The arbitrator shall render his/her decision in writing. The decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator shall apply applicable law. Absent fraud, collusion or willful misconduct by the arbitrator, the award shall be final, and the judgment may be entered in any court having jurisdictions. The arbitrator may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidations of the arbitrations with any other involving common issues of law or fact or that may promote judicial economy. If a court, applying applicable substantive state law, would be authorized to award punitive or exemplary damages, the arbitrators shall have the same power, but the arbitrators otherwise shall not award punitive or exemplary damages.

3.9 Representation by Counsel. All parties shall have the right to representations by legal counsel at any stage of the proceedings.

3.10 Costs. The parties shall share equally the costs of the arbitrator's fees, filing fees and any other expenses such as court reporter fees that are jointly incurred. All other costs and expenses, including attorney fees, shall be paid by the party incurring them.

Failure to Pay Arbitrator's Fee. In the event that any party fails or refuses to pay that party's designated portion of the fees above, the other party who has paid that party's share of the arbitrator's fee may request of the arbitrator and award of default against the non-paying party, which shall be granted absent extenuating circumstances that in the arbitrator's judgment exist making it unfair to grant a default award to the requesting party.